

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Final Office Action dated August 5, 2008. Reconsideration and allowance of the application in view of the amendments provided above and the remarks to follow are respectfully requested.

Claims 1-13 are pending in the Application. Claims 8-16 are added by this amendment. By means of the present amendment, claims 1-8 are amended including for better conformance to U.S. practice, such as deleting reference numerals typically used in European practice that are known to not limit the scope of the claims. Further amendments include changing "characterized in that" to -- wherein--, and amending dependent claims to begin with "The" as opposed to "A" and correcting informalities noted upon review of the claims. By these amendments, claims 1-8 are not amended to address issues of patentability and Applicant respectfully reserves all rights under the Doctrine of Equivalents. Applicant furthermore reserves the right to reintroduce subject matter deleted herein at a later time during the prosecution of this application or continuing applications.

In the Final Office Action, claims 1-8 are rejected under 35 U.S.C. §103(a) as allegedly obvious over U.S. Patent Publication

No. 2002/0054983 to Nishihara ("Nishihara") in view of U.S. Patent Publication No 2002/0160306 to Hanaoka ("Hanaoka"). It is respectfully submitted that claims 1-16 are allowable over Nishihara in view of Hanaoka for at least the following reasons.

Nishihara shows a dual recording layer medium 22 having first and second recording layers 5, 14 (see, Nishihara, FIG. 1 and paragraphs [0055] - [0057]). It is undisputed that Nishihara fails to show crystallization promoting layers (see, Final Office Action, page 3).

Hanaoka is cited to supply that which is missing from Nishihara, however it is respectfully submitted that reliance on Hanaoka is misplaced. While Hanaoka does show a crystallization acceleration layer, Hanaoka only shows a single crystallization acceleration layer in contact with the recording layer. It is respectfully submitted that Hanaoka does not disclose or suggest a second crystallization acceleration layer in contact with the recording layer.

The optical data storage medium of claim 1 is not anticipated or made obvious by the teachings of Nishihara in view of Hanaoka. For example, Nishihara in view of Hanaoka does not disclose or suggest, an optical data storage medium that amongst other

patentable elements, comprises (illustrative emphasis provided) "a substrate with deposited on a side thereof: a first recording stack comprising a first phase-change type recording layer, said first recording stack being present at a position most remote from the entrance face, at least one further recording stack, which comprises a further phase-change type recording layer, being present closer to the entrance face than the first recording stack, the further recording layer having a first surface closest to the entrance face and a second surface furthest from the entrance face, a transparent spacer layer between the recording stacks, said transparent spacer layer having a thickness larger than the depth of focus of the focused laser-light beam, wherein the further recording layer is substantially of an alloy defined by the formula  $\text{Ge}_x\text{Sb}_y\text{Te}_z$ , in atomic percentages, where  $0 < x < 15$ ,  $50 < y < 80$ ,  $10 < z < 30$  and  $x+y+z=100$  with a thickness selected from the range of 4 to 12 nm and a first transparent crystallization promoting layer having a thickness smaller than 5 nm is present in contact with the first surface of the further recording layer and a second transparent crystallization promoting layer having a thickness smaller than 5 nm is present in contact with the second surface of the further recording layer" as recited in claim 1.

Based on the foregoing, the Applicant respectfully submits that independent claim 1 is patentable over Nishihara in view of Hanaoka and notice to this effect is earnestly solicited. Claims 2-11 respectively depend from claim 1 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration and allowance of each of dependent claims 2-11 is respectfully requested.

Further, the optical data storage medium of claim 12 is not anticipated or made obvious by the teachings of Nishihara in view of Hanaoka. For example, Nishihara in view of Hanaoka does not disclose or suggest, an optical data storage medium that amongst other patentable elements, comprises (illustrative emphasis provided) "wherein the further recording layer is substantially of an alloy defined by the formula  $\text{Ge}_x\text{Sb}_y\text{Te}_z$  in atomic percentages, where  $0 < x < 15$ ,  $50 < y < 80$ ,  $10 < z < 30$  and  $x + y + z = 100$  and that at least one transparent crystallization promoting layer is present in contact with the further recording layer, wherein the first recording layer has a composition  $\text{Ge}_{7.7}\text{Sb}_{76.4}\text{Te}_{16.6}$ " as recited in claim 12.

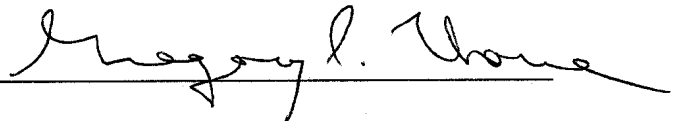
Based on the foregoing, the Applicant respectfully submits that independent claim 12 is patentable over Nishihara in view of

Hanaoka and notice to this effect is earnestly solicited. Claims 13-16 respectively depend from claim 12 and accordingly is allowable for at least this reason as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration and allowance of dependent claims 13-16 is respectfully requested.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicant has made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

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